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11

12 **UNITED STATES BANKRUPTCY COURT**  
13 **EASTERN DISTRICT OF WASHINGTON**  
14

15  
16 In Re:

17  
18 Easterday Ranches, Inc.

19 Debtor<sup>1</sup>.  
20  
21  
22

Case No. 21-00141-WLH11

**MOTION FOR ADEQUATE  
PROTECTION**

**&**

**OBJECTION TO DEBTORS  
FINAL MOTIONS TO USE CASH  
COLLATERAL**

***WITH REQUEST TO SHORTEN  
TIME FOR NOTICE AND  
OBJECTIONS***

31  
32 <sup>1</sup> The Debtors along with their case numbers are as follows: Easterday Ranches, In. (21-00141-  
33 WLH11) and Easterday Farms, a Washington general partnership (21-00176-WLH11).  
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Weyns Farms, LLC ("**Weyns**") and Sunray Farms, LLC ("**Sunray**") (collectively "**Lien Claimants**") move the Court for adequate protection of their Washington State preparer lien rights. The motion is made pursuant to 11 U.S.C. §361 and is supported by the Declarations of Kees Weyns and Jake Wardenaar.

**1. Factual Background:**

1.1 Easterday Ranches, Inc. ("**Ranches**") filed for bankruptcy protection on February 1, 2021.

1.2 Easterday Farms ("**Farms**") filed for bankruptcy protection on February 8, 2021.

1.3 Ranches was in the business of purchasing, feeding and caring for cattle pursuant to a pre-petition feeding agreement with Tyson.

1.4 Post-petition Ranches and Farms have operated pursuant to interim cash collateral orders ("**Interim Orders**"). The Debtor has proposed final cash collateral orders which would provide for additional cash collateral usage for Ranches through June, 2021 and for Farms through April 2, 2021.



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1 1.5 Debtors indicated at the interim cash collateral hearings that to  
2 the extent the Debtors were utilizing feed post-petition (whether or not that  
3 feed was delivered pre-petition) that feed would be paid for.

4  
5  
6 1.6 According to the Interim Order, Ranches was authorized to pay  
7 for approximately \$5.0 million in "feed" between the date of filing and the  
8 beginning of March.  
9

10  
11 1.7 The proposed final cash collateral budget ("Final Budget")  
12 proposes an additional \$7.7 million in feed will be utilized through June, 2021.  
13 Of the feed described in the Final Budget, approximately \$4.6 million would  
14 be paid to "3<sup>rd</sup> Parties" and \$3.1 million would be paid to Easterday Farms.  
15  
16

17  
18 1.8 To date, neither Weyns nor Sunray have received any post-  
19 petition payment from Ranches. It is unclear whether any other parties have  
20 received post-petition feed payments from Ranches.<sup>2</sup>  
21  
22

23  
24 1.9 Weyns delivered the following feed to Ranches during 2020:

25  
26 Triticale: 10,848 Tons

27  
28 Corn Silage: 7,609 Tons

29  
30 High Moisture Corn: 339,283 Bushels  
31

32  
33 <sup>2</sup> The Lien Claimants have asked for this information and the Debtor has indicated it is  
34 working on putting together responsive information.

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1 1.10 Sunray delivered the following feed to Ranches during 2020:

2 Triticale: 2,550 Tons

3  
4 Corn Sileage 4,469 Tons

5  
6 Field Corn: 632 Tons

7  
8 1.11 Weyns remains unpaid for its 2020 feed deliveries in the  
9 following amounts:

10  
11 Triticale: \$ 247,771.97

12  
13 Corn Sileage: \$ 217,252.37

14  
15 High Moisture Corn: \$1,819,484.00

16  
17 1.12 Sunray remains unpaid for its 2020 feed deliveries in the  
18 following amounts:

19  
20 Triticale: \$ 29,131.28

21  
22 Corn Sileage: \$ 63,793.98

23  
24 Field Corn: \$ 43,978.81

25  
26 1.13 Weyns and Sunray have filed lien statements with the  
27 Washington Dept. of Licensing with respect to the Triticale, Corn Sileage and  
28 Field Corn. Weyns filed its lien statement on January 29, 2021, and amended  
29 its lien statement on March 4, 2021, to correct addition errors. Weyns filed its  
30  
31  
32  
33  
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1 notice of lien statement on March 4, 2021. Sunray filed its lien statement on  
2  
3 January 5, 2021 and filed its notice of lien statement on February 23, 2021. A  
4  
5 lien statement and notice relative to the Ranches/Weyns high moisture corn  
6  
7 contract was filed March 4, 2021, however, payment is not due under that  
8  
9 contract until May 15/June 15, 2021.<sup>3</sup>

10 1.14 Weyns delivered feed to four (4) separate locations: (a) the North  
11  
12 lot; (b) the Camas lot; (c) the Allred lot; and (d) the Weyns lot. Specifically,  
13  
14 Weyns delivered the following feed:

15 North Lot: 6,209.29 tons High Moisture Corn

16  
17 2,585 tons Triticale

18  
19 Camas Lot: 1,266 tons Triticale

20  
21 Allred Lot: 3,032 tons High Moisture Corn

22  
23 894 tons Triticale

24 Weyns Lot: 12,175 tons of Triticale and Corn Silage

25  
26 1.15 Much of the feed delivered by Weyns and Sunray remained in  
27  
28 existence on the date of filing.

29  
30  
31  
32  
33 <sup>3</sup> Half of the payment is due May 15 and half is due June 15.

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1 1.15.1 Weyns believes there is between 7,000-7,200 tons of  
2 Triticale and Corn Silage on the Weyns feedlot. This feed has not been  
3 commingled with feed delivered by any other party.  
4

5  
6 1.15.2 In addition, Weyns believes there is between 650-1000  
7 tons of high moisture corn and between 1,500-2,000 tons of Triticale and Corn  
8 Silage on the Allred feedlot. This feed was provided by Sunray and Weyns  
9 and was not commingled with feed from any third parties.  
10  
11  
12

13 1.16 Ranches maintained a limited amount of cattle on the Allred lot  
14 since the bankruptcy petition was filed. The cattle were fed from the feed  
15 delivered by Weyns and Sunray. The cattle have all been removed as of  
16  
17 March 4, 2021.  
18  
19

20 1.17 Since the filing of the petition, Ranches has, upon information  
21 and belief, continued to utilize feed in existence on the date of the bankruptcy  
22 petition for purposes of feeding the remaining cattle allegedly owned by  
23  
24 Tyson.  
25  
26  
27

28 1.18 According to its budgets the only source of income for Ranches is  
29 from "advances" made by Tyson. During the period contemplated by the  
30 Final Budget, Tyson will advance approximately \$9.5 million to Ranches.  
31  
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1 Under the Final Budget most of the funds received from Tyson will be utilized  
2  
3 in one form or another in paying expenses, such that the projected ending cash  
4 balance on June 30, 2021 is \$627,000.

6 1.19 The Lien Claimants have requested the following information: (a)  
7  
8 how much feed was owned by Ranches on the date of the bankruptcy filing –  
9  
10 and where was the feed located; (b) how much remained due to third parties  
11  
12 who delivered feed to the Debtor pre-petition on the date of the bankruptcy  
13  
14 filing; (c) how much of the pre-petition feed has been utilized post-petition;  
15  
16 (d) how much has the Debtor paid to Easterday Farms or the third party  
17  
18 suppliers for feed under the Interim Order; and (e) how will payments to third  
19  
20 party feed suppliers be made under the Final Budget. The Debtor has  
21  
22 indicated that it is working on assembling some or all of this information but it  
23  
24 is not currently available.

## 25 II. Motion for Adequate Protection

26 2.1 RCW 6.13.030 provides as follows:

27  
28 Starting on the date a producer delivers grain, hay, or straw to a  
29 preparer, the producer has a first priority statutory lien, referred  
30 to as a "preparer lien." This preparer lien shall continue twenty  
31 days after payment for the product is due and remains unpaid,  
32 without filing any notice of lien, for the contract price, if any, or  
33 the fair market value of the products delivered. The preparer  
34

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1 lien attaches to the agricultural products delivered by the  
2 producer to the preparer, and to the preparer's accounts  
3 receivable.

4 2.2 Weyns and Sunray are both producers who delivered feed to  
5 Ranches.<sup>4</sup> It is unclear from information provided whether Debtor claims the  
6 feed is owned by Farms or Ranches. If Farms owns the feed, then this motion  
7 for adequate protection and objection should apply to Ranches and to Farms.  
8 Delivery of the feed automatically gives rise to the preparer lien, which  
9 remains a perfected, first priority lien against agricultural products delivered  
10 by the producer and the preparer's accounts receivable, until 20 days after  
11 payment is due. The lien continues in priority if it is filed with the  
12 Washington Dept. of Licensing within twenty (20) days after payment is due.  
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20 2.3 Weyns and Sunray are entitled to preparer's liens pursuant to  
21 RCW 6.13.030 to secure the full unpaid balance of their claims.  
22  
23

24 2.4 At the emergency cash collateral hearing on February 3, 2021,  
25 Sunray and Weyns raised the issue of a lack of adequate protection of their  
26 liens. Ranches argued that the Lien Claimants were adequately protected  
27 because the Debtor would be paying for all feed utilized post-petition (i.e. any  
28  
29  
30  
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32

33 <sup>4</sup> Ranches is a preparer under RCW 6.13.010(6).  
34



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1 diminution in feed would be offset by a cash payment to a feed supplier).

2  
3 After the emergency hearing the Debtor agreed to include Weyns and Sunray  
4 as adequate protection parties under the Ranches and Farms final cash  
5 collateral orders. The Debtors have circulated a proposed order that does in  
6 fact provide that Weyns/Sunray are entitled to an adequate protection lien to  
7 the extent of diminution in value. The adequate protection lien essentially  
8 covers all assets of the Ranches and Farms estates except for avoidance  
9 claims. Unfortunately, there is little clarity on what assets the Ranches and  
10 Farms estates own and how much equity, if any, these estates have in owned  
11 assets. As a result of the lack of information, Ranches and Farms have not  
12 demonstrated that the adequate protection collateral is sufficient to protect the  
13 Lien Claimants.  
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22 2.5 There is no evidence that Ranches has in fact paid feed suppliers  
23 for feed that was utilized post-petition. It is clear that at least some of the feed  
24 provided by the Lien Claimants has been utilized post-petition without any  
25 payment being made to the Lien Claimants.<sup>5</sup>  
26  
27  
28  
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32 <sup>5</sup> The Lien Claimants know this is the case because the only feed available at the Allred feedlot  
33 was produced by Weyns/Sunray and the cattle located on the Allred feedlot have been  
34 continuously fed since the petition date.

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1           2..6 With regard to the adequate protection lien, it is unclear what the  
2  
3 nature or extent of the adequate protection collateral is. It does not appear  
4  
5 based upon information provided that Ranches has any: (a) accounts  
6  
7 receivable (other than those which would be subject to a set-off claim by  
8  
9 Tyson); (b) significant equity in equipment; or (c) unencumbered property.  
10  
11 The Lien Claimants have been told there is equity in certain real estate, but  
12  
13 given the complex ownership structure described by the Debtors at the status  
14  
15 conference on March 3, 2021 in combination with the pre-existing liens in  
16  
17 favor of pre-petition lenders it is not at all clear that the Lien Claimants are  
18  
19 protected. At best, it appears that the Lien Claimants are being asked to  
20  
21 substitute their first position liens against feed to potential junior interests in  
22  
23 real estate.

24           2.7 Fundamentally the Debtor's proposal fails to provide adequate  
25  
26 protection to the Lien Claimants. The Lien Claimants analyze the situation as  
27  
28 follows:

29           2.7.1 The Lien Claimants are being asked to allow their  
30  
31 collateral to be utilized by the Debtor to feed the Tyson cattle (which doesn't  
32  
33 appear to provide any substantial benefit to the estate);  
34

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1           2.7.2 No corresponding receivable from Tyson is created in the  
2  
3 process;

4           2.7.3 Virtually all cash paid by Tyson under the Final Budget is  
5  
6 utilized in operations;

7  
8           2.7.4 Lien Claimants do not receive any of the payments carved  
9  
10 out for "Feed" or "3<sup>rd</sup> Party Feed" under the Interim Order or Final Budget;  
11  
12 and

13           2.7.5 Lien Claimants may receive payment to the extent their  
14  
15 collateral is diminished from equity in real estate or other unspecified  
16  
17 collateral.

18  
19           2.8 The clearest way in which to provide adequate protection to the  
20  
21 Lien Claimants (and others similarly situated) would be to require the Debtor  
22  
23 to place cash, in an amount equal to the value of the feed that has been utilized  
24  
25 since the filing (or which will be utilized under the Final Budget), in a  
26  
27 segregated account, for the benefit of all existing or potential lien claimants  
28  
29 ("Feed Reserve Fund"). At the same time the court should establish  
30  
31 procedures governing claims to the Feed Reserve Fund which provide for a  
32  
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1 relatively quick proving up of claims and distribution of funds to eligible  
2 suppliers.  
3

4 2.9 In addition, if the Debtor sells portions of its inventory of feed, it  
5 should be required to place those funds in the Feed Reserve Fund pending a  
6 determination as to who is entitled to the funds.  
7  
8

9  
10 2.10 Without the Feed Reserve Fund or some other adequate  
11 protection<sup>6</sup>, the Lien Claimants (and others similarly situated) are effectively  
12 being asked to finance the care and finishing of Tyson's cattle without any  
13 assurance they will ultimately be paid.  
14  
15

16  
17 2.11 As described above, the Lien Claimants have identifiable feed on  
18 both the Allred and Weyns feedlots. An additional source of adequate  
19 protection would be for the Debtor to obtain Court approval to abandon those  
20 feed piles to the Lien Claimants, with the Lien Claimants being required to  
21 apply any payments received against their lien claims.  
22  
23

24 2.12 The use of the property is outside the ordinary course of the  
25 Debtor's business because it is being used to enable a liquidation (largely for  
26  
27  
28  
29  
30

31 <sup>6</sup> In an operating case one would expect existing feed to be replaced with new feed – which  
32 could then provide the adequate protection for use of the existing feed. From all accounts this  
33 case will be a liquidation and the Debtor are not purchasing any new feed that won't be utilized  
34 in the process of feeding out the Tyson cattle.



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1 Tyson's benefit). As pointed out above, if this were an ordinary course  
2 transaction the feed being utilized would be replaced with new feed.  
3

4 2.13 Under 11 U.S.C. §§361, 363, the Lien Claimants are entitled to  
5 adequate protection. The Debtor's proposal simply doesn't provide it.  
6  
7

### 8 3. Objection to Use of Cash Collateral

9  
10 3.1 The Debtors have requested the Court enter final cash collateral  
11 orders that approve the Final Budgets and implicitly allow the Debtors to  
12 continue utilizing the Lien Claimants collateral without any protection. The  
13 Lien Claimants understand that the remaining cattle need to be fed. Rather  
14 than approving the Debtors' proposed budgets, the Lien Claimants believe the  
15 court should grant a one-week extension of the use of cash collateral (in  
16 accordance with the Debtors' budgets) with payment for any feed utilized  
17 during that week to be placed in a Feed Reserve Fund.  
18  
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24 3.2 As a condition to additional use of cash collateral the Debtor  
25 should be required to provide the information described in ¶1.19, above to the  
26 court and parties in interest. Without that information it is impossible to  
27 determine whether the Lien Claimants are adequately protected.  
28  
29  
30

31 ///End of Body of Document///  
32  
33  
34

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1 DATED this 4<sup>th</sup> day of March, 2021  
2  
3

4 /s/ Roger W. Bailey

5 Steven H. Sackmann (WSBA 00618)

6 Roger W. Bailey (WSBA 26121)

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8 Counsel for Weyns/Sunray  
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